

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	8:07CR234
)	
v.)	
)	
WENSCELAO ARRAIZA,)	ORDER
)	
Defendant.)	
_____)	

This matter is before the Court on the report and recommendation of the magistrate judge (Filing No. 36), defendant's statement of objections to the report and recommendation (Filing No. 40), and the brief of defendant in support of his objections (Filing No. 41). The Court has reviewed the report and recommendation, the objections of defendant, and the brief of the defendant in support of said objections, as well as the supplemental briefs of the parties (Filing Nos. 33 and 34).

The two remaining objections of defendant are (a) the defendant objects to the legal conclusion that State Patrol Officer Frye had probable cause to stop defendant's vehicle, and (b) the legal conclusion on Page 5 of the report that the defendant voluntarily consented to a search of his vehicle. Having reviewed this matter, the Court is satisfied that the report and recommendation of the magistrate judge should be approved and adopted.

A review of the transcript supports the magistrate judge's findings that the officer had probable cause to stop the defendant's vehicle. With respect to the issue of whether defendant voluntarily consented to a search of his vehicle, the Court notes that defendant signed a search form (Exhibit No. 4) which was in the Spanish language and which clearly provides for a search of his vehicle. The testimony is that he read the permission to search form, that he understood it, and that he voluntarily signed it. For this reason, the apparent confusion over a translation over what Officer Frye may have said prior to the defendant reading the search form is not relevant. On this basis, the Court finds defendant's objection to the magistrate judge's legal conclusion that defendant had voluntarily consented to a search of his vehicle is without merit. For these reasons, the Court will adopt the report and recommendation of the magistrate judge. Accordingly,

IT IS ORDERED:

- 1) The report and recommendation of the magistrate judge (Filing No. 36) is approved and adopted;
- 2) Defendant's objection (Filing No. 40) is overruled and his motion to suppress (Filing No. 16) is denied;
- 3) Trial of this matter is scheduled for:

Monday, March 24, 2008, at 9 a.m.

in Courtroom No. 5, Roman L. Hruska United States Courthouse, 111 South 18th Plaza, Omaha, Nebraska. The parties will have time to prepare for trial or pursue plea negotiations, and the ends of justice will be served by continuing this case and outweigh the interests of the public and the defendant in a speedy trial. The additional time between February 1, 2008, and March 24, 2008, shall be deemed excludable time in any computation of time under the requirement of the Speedy Trial Act. 18 U.S.C. § 3161(h)(8)(A) & (B).

DATED this 1st day of February, 2008.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court